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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

GOWANUS INDUSTRIAL PARK, INC.,

Plaintiff,

against

HESS CORPORATION,

Defendant.

:
:
: Civil Action No. 10-5522 (JG) (JO)

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:
: **ECF CASE**

:
:
: **DECLARATION OF**
: **GEORGE S. EDGE**

George S. Edge declares:

1. I am the former Manager of Engineering & Construction for Hess Corporation's ("Hess") terminals. I submit this declaration in opposition to GIP's motion for summary judgment and in support of Hess's cross-motion for summary judgment. I worked for Hess from 1966 until my retirement in 1999, after which I have consulted for Hess from time to time, and I have personal knowledge of the facts set forth in this declaration.

Hess's Ownership of the Brooklyn Terminal

2. Hess, through its subsidiary Ira S. Bushey & Sons, Inc. ("Bushey"), is the owner, in fee simple, of upland property on the eastern bank of the Henry Street Basin (the "Basin"), in Red Hook, Brooklyn, New York, used for petroleum transshipment and storage (the "Brooklyn Terminal").

3. Hess acquired the Brooklyn Terminal when, on or about June 24, 1977, by Stock Purchase Agreement, it acquired all the shares in Bushey, which was the prior owner of the Brooklyn Terminal. Since the 1960's, Patchogue Oil Terminal, which was owned by Bushey had been operating the Brooklyn Terminal as a facility at which oil was delivered by barge, offloaded into above ground storage tanks, and then loaded onto tanker trucks for delivery to the New York City market. Since June 24, 1977, Bushey has remained a wholly owned subsidiary of Hess.

4. As of June 24, 1977, and for many years prior, Bushey owned all right, title, and interest in the Brooklyn Terminal.

5. Bushey acquired the Brooklyn Terminal by way of two deeds dated September 11, 1940 and April 15, 1942. True and correct copies of those deeds are annexed hereto as Exhibits 1 and 2, respectively.

6. When Hess acquired the Bushey shares, it relied, *inter alia*, upon the deeds it received from Bushey in acquiring (and concluding that it was acquiring) the Brooklyn Terminal.

7. On information and belief, from the date in 1977 when Hess first acquired the Brooklyn Terminal to the date in 2004 when the Port Authority attempted to transfer the Parcels to Gowanus Industrial Park, Inc. ("GIP"), through a conveyance of the Parcels to New York State, Hess never received any notice from the Port Authority asserting that any part of the Brooklyn Terminal encroached upon land to which the Port Authority held title.

8. Based on a review of documents maintained in Hess's files and my own recollection from the time I worked at Hess, from the date Hess first acquired the Brooklyn Terminal in 1977 to on or about January 28, 1998, Hess never received any notice from any person or entity, including but not limited to the Port Authority, stating, or even suggesting that

any part of the Brooklyn Terminal encroached upon a parcel to which another claimed title, and believed that it owned the entire Brooklyn Terminal, through its acquisition of Bushey.

9. On March 13, 1998, Hess received a letter from John Quadrozzi, Jr., in which Mr. Quadrozzi claimed that January 28, 1998 was the date that he “first contacted” Hess about the possibility that a part of the Brooklyn Terminal encroached upon a parcel to which GIP claimed title. A true and correct copy of that letter is annexed hereto as Exhibit 3.

The Bulkhead

10. When Hess acquired the Brooklyn Terminal from Bushey, it understood the Basin’s eastern bank to be an integral part of the Terminal, providing protection (albeit evidently deteriorating protection) for the adjacent above ground storage tanks on that eastern bank. The western edge of the Brooklyn Terminal – and the eastern edge of the Basin – was a bulkhead consisting of wooden pilings sunk into the Henry Street Basin and a crib wall (sometimes referred to as the “wooden bulkhead”). As a practical matter, the wooden bulkhead was (and was treated as) part of the Brooklyn Terminal and, as such, Hess’s responsibility.

11. When Hess acquired the Brooklyn Terminal, there were three above ground storage tanks just east of the wooden bulkhead, which Bushey or its tenant, the Patchogue Oil Company, had installed by the 1960’s. Each of these tanks is situated within ten yards (or less) of the Basin.

12. Under various regulations the tanks could not, at present, be constructed as of right in their present location so close to the Basin.

13. When the Brooklyn Terminal was acquired in 1977, there was already a fence and piping located just east of the wooden bulkhead and just west of the tanks. The piping was on the western side of the tanks because, among other reasons, the tank intake valves were on that

western side. The piping associated with the three western tanks today is largely in the same location (and substantially the same piping) as the piping in existence at the time of Hess's acquisition.

14. Since Hess acquired the Brooklyn Terminal in the 1970's, it has maintained a fence atop either the wooden bulkhead or the Bulkhead for safety, security, and environmental reasons.

15. The wooden bulkhead extended somewhat further west than the present bulkhead does. (I understand from Judge Glasser's decision in the first lawsuit by GIP against Hess that the present bulkhead lies slightly west of United States Pierhead and Bulkhead line (the same line as was established by 1875 New York Laws Ch. 398), in a distance ranging from 4' 6" at the northerly end of the bulkhead to 6' 8" at a point 210 feet south and then expanded for a distance of approximately 318 feet further south from 6' 8" to 15' 4", 13' 4", 10' 9", 8' 4" and then 5' 11" west of the bulkhead line before reducing to 1' 7" and then 5" west of the bulkhead line for the remaining approximately 45 feet of this portion of the bulkhead line before turning 90 degrees to the east. The location of the wooden bulkhead is marked on a 1972 survey map by Bartlett, Ludlam & Dill Associates. A true and correct copy of the 1972 Bartlett survey is annexed hereto as Exhibit 4. It is also reflected in construction drawings by Ottoson & Ottoson ("Ottoson"), engineers, prepared for Hess in or about 1984, annexed hereto as Exhibit 5.

16. In or about 1982, the U.S. Army Corps of Engineers (the "COE") advised Hess that a portion of the Brooklyn Terminal's waterside improvements, including the wooden bulkhead, were deteriorating and should be repaired. Hess determined that the entire wooden bulkhead should be replaced with a modern steel and concrete bulkhead. True and correct copies

of photographs of the deteriorating wooden bulkhead from the early 1980s, which Hess maintained in its business records, are annexed hereto as Exhibits 6-8.

17. In response to the COE's position, in or about 1984, Hess engaged Ottoson to design and engineer a means of reinforcing the eastern bank of the Basin adjacent to the tanks with a steel sheet bulkhead and enclosed with a thirty inch thick concrete cap along its western face (the "Bulkhead").

18. Ottoson's construction drawings for the Bulkhead made plain that the Bulkhead was to be constructed some feet east of the wooden bulkhead. A true and correct copy of one of Ottoson's construction drawings for the Bulkhead is annexed hereto as Exhibit 5.

19. The construction of the Bulkhead was commenced and completed in or about 1984-1985.

20. The construction of the Bulkhead was a large-scale project that was time-consuming and expensive. In all, the construction took about 13 months and cost about \$3.818 million.

21. As part of the construction of the Bulkhead, the fence on the wooden bulkhead was removed, and, once the Bulkhead was constructed, a new fence was erected on top of it, so as to make the tanks and piping secure and in the interests of safety.

22. The Bulkhead was constructed under a regulatory permit issued by the COE. Hess submitted permit applications for all modifications to the Bulkhead.

23. In its initial permit application, Hess notified the COE that its proposed work was necessary "to protect existing facilities ... and to comply with requirements to protect the environment." A true and correct copy of that application is annexed hereto as Exhibit 9.

24. Hess submitted a subsequent application—which concerned some modifications to its construction plans—in response to the COE’s finding that Hess’s waterfront facilities were “in imminent danger of falling into tidal waters, thereby creating a serious hazard to navigation and request that immediate action be taken to remedy this condition.” A true and correct copy of that application is annexed hereto as Exhibit 10.

25. The COE responded to Hess’s permit applications by noting that Hess was allowed to execute its plans pursuant to a nationwide permit codified at 33 C.F.R. §330. 5(a)(3). A true and correct copy of the COE’s response to Hess’s permit applications is annexed hereto as Exhibit 11.

26. Permission from other agencies, including the New York State Department of Environmental Conservation, the New York City Department of Ports and Terminals, and the New York City Fire Department, was also required and obtained.

27. At no point during or after the construction of the Bulkhead did the Port Authority, the COE, or any other city, state or federal agency raise any complaints or objections with Hess as to the location of the Bulkhead, or any possibility that the Bulkhead lay on property that Hess did not own.

28. As found by Judge Glasser’s 2003 decision, the Bulkhead runs in a straight line from 5’8½” west of the bulkhead line at the north end of the Bulkhead to a point 210 feet south of the north end, where the west face of the bulkhead is 5’ 10¼“ west of the bulkhead line and continues in a straight line in a southerly direction for approximately 318 additional feet to a point where the west face of the bulkhead is 6’ 1” west of the bulkhead line before reducing to 1’ ¼“ and then 1” west of the bulkhead line for the remaining approximately 53 feet of this portion of the bulkhead line before turning 90 degrees to the east. The location of the Bulkhead is

marked on a 1998 survey map by Bartlett, Ludlam & Dill Associates. A true and correct copy of the 1998 Bartlett survey is annexed hereto as Exhibit 12.

29. As I recall from my direct involvement (my initials are on many of the construction drawings), the Bulkhead was designed, constructed, and engineered for the sole purpose of preventing the subsidence and erosion of the land upland of the eastern bank of the Basin on which the tanks are located, so as to facilitate and preserve the waterborne commerce of the Brooklyn Terminal. It was not designed, constructed, nor engineered, and is not fit, for docking or mooring vessels.

30. Around the same time that Ottoson designed and engineered the Bulkhead, as part of the same project, it designed and engineered a bulkhead on the southeast corner and east side of the Brooklyn Terminal (the "Pier 2 Bulkhead"). In contrast to the Bulkhead, the Pier 2 Bulkhead was designed, constructed, and engineered for the purpose of mooring vessels, as the drawings reflect. A true and correct copy of one of Ottoson's construction drawings for the Pier 2 Bulkhead so reflecting is annexed hereto as Exhibit 13.

31. By preventing the subsidence and erosion of the land upland of the eastern bank of the Basin on which the tanks are located, the Bulkhead serves the vital purpose of protecting the tanks and ensuring their viability for the receipt, storage, and offloading of home heating oil and other petroleum products.

32. Any attempt to alter the Brooklyn Terminal so that no portion of it were to extend west of the bulkhead line would be very costly and time-consuming, and would require the tanks to be out of service for at least one winter.

I declare under penalty of perjury that the foregoing is true and correct.

August 5, 2011


George S. Edge